

Appendix

The examiner has objected to the applicant's brief on the grounds that it does not contain a correct copy of the appealed claims as an appendix thereto. The applicant did submit an appendix with its appellate brief. A copy of the applicant's stamped return post-card receipt indicating that a two page appendix was received with the applicant's brief is submitted herewith as Exhibit A. A copy of the appendix submitted with the applicant's brief of November 27, 2002, is included as Exhibit B to this response.

It is not clear from the examiner's Notification whether the appendix was missing from the file the examiner received or if the examiner received the applicant's appendix but considers there to be a deficiency in that appendix. If there is some deficiency with the applicant's appendix, the applicant is not aware of it, nor has the examiner identified the nature of any such deficiency. If the examiner believes there is something in the applicant's appendix which requires correction, he is respectfully requested to identify the same so that the applicant may take the necessary action.

Arguments in Brief

The examiner has objected to the brief on the ground that the applicant has not submitted arguments in support of each claim group. The applicant respectfully takes issue with the examiner on this point. The applicant's brief contains separate arguments directed to each group of claims in the applicant's brief, and the examiner is respectfully requested to withdraw this objection. In his brief, the applicant grouped his claims for purposes of appeal as follows.

1. Claims 43-44. These claims do not rise or fall with any other claims.
2. Claims 45 and 47. These claims do not fall with any other claims, although they may stand if the independent claims on which they depend are found to be allowable.

3. Claims 46 and 48-52. These claims do not rise or fall with any other claims.
4. Claim 53. This claim does not rise or fall with any other claim.

See, Exhibit C.

The applicant has separately argued each of these groups of claims. The applicant submitted arguments regarding the merits of the examiner's rejection of independent claim 43 on pages 5, 6, and 7 of the applicant's November 27, 2002 brief, a copy of which is contained in Exhibit C to this response. Claims 44 and 45 are dependent upon claim 43 and are entitled to rise with it, if the applicant's arguments regarding claim 43 are accepted by the Board. The applicant pointed this out on page 7 of his brief. Exhibit C.

As noted, claim 45 depends from claim 43. Claim 47 depends from claim 46. Although each of these claims may rise with their respective independent claims, the applicant contends that they may rise alone even if their independent claims fall. The applicant submitted arguments to this effect on page 7 of his November 27, 2002, brief.

Claim 46 is independent. The applicant addressed the examiner's rejection of claim 46 on pages 8, 9, and 10 of his brief. Exhibit C. A portion of these arguments is admittedly jointly applicable to claims 46 and 53. The examiner rejected claims 46 and 53 in view of the combination of Aucsmith and Johnson. In so far as the applicant contends that the combination itself was improper, it only made sense to argue against the combination as applied to both claims. However, the applicant also contends that even if the combination were proper, the references do not teach all of the limitations of claim 46. A separate argument to this effect appears on page 10 of the applicant's brief. Exhibit C.

Claims 48-52 depend on claim 46. Accordingly, they rise if claim 46 rises. Applicant